



U.S. Department of Justice

*Civil Division, Torts Branch
Federal Tort Claims Act Staff*

Washington, D.C. 20044

PJP:GJ:KGSowell:tlg
157-16-42540

October 22, 2008

Mr. Michael P. Giambalvo
Reg. No. 59036-066
U.S.P. Hazelton
P.O. Box 2000
Bruceton Mills, WV 26525

Re: Administrative Tort Claim of Michael P. Giambalvo

Dear Mr. Giambalvo:

This is in response to your claim dated September 7, 2008, which you presented to the U.S. Department of Justice. The Department of Justice received your claim on September 25, 2008.

Because your claim concerns an alleged tort involving the Federal Bureau of Prisons, I am forwarding it to that agency. All further communication on this matter should be directed to the Federal Bureau of Prisons at the address listed below.

Very truly yours,

A handwritten signature in cursive script, reading "Khlaver Graves-Sowell".

KHLAYER GRAVES-SOWELL
Claims Adjustor
Civil Division, Torts Branch

✓cc: Honorable Joyce Zoldak
Associate General Counsel
Federal Bureau of Prisons
320 First Street, N.W.
Room 977 HOLC Building
Washington, D.C. 20534

RECEIVED

OCT 27 2008

BUREAU OF PRISONS
OGC/LITIGATION BRANCH

TO: DIRECTOR, TORT BRANCH CIVIL DIVISION
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

RECEIVED

OCT 27 2008

BUREAU OF PRISONS
OGC LITIGATION BRANCH

RE: MR. MICHAEL P. GIAMBALVO #59036-066
- TORT CLAIM - COVER LETTER -

- 9-07-08 -

DEAR SIR,

ENCLOSED IS MY FEDERAL TORT CLAIM ALONG WITH DOCUMENTS
IN FULL SUPPORT OF CLAIM WHICH I HAVE PROVIDED SUFFICIENT INFORMATION
THAT WOULD ENABLE YOUR OFFICE TO HAVE A FULL INVESTIGATION INTO THE
MATTER AT HAND IN WHICH I REQUEST \$250,000.00 FOR DAMAGES AND
PERMANENT INJURY DUE TO MALPRACTICE, NEGLIGENCE AND RECKLESSNESS.
TO DATE MY MEDICAL CONCERNS HAVE NOT BEEN PROPERLY ADDRESSED.

I WILL AGREE TO HOLD OFF FILING A CIVIL RIGHTS COMPLAINT UNDER
DELIBERATE INDIFFERENCE, CRUEL AND UNUSUAL PUNISHMENT, UNNECESSARY
AND WONTON INFLECTION OF PAIN WHICH HAVE VIOLATED MY RIGHTS UNDER THE
EIGHTH AMMENDMENT ALONG WITH RETALIATION IN VIOLATION OF FIRST
AMMENDMENT RIGHT TO REDRESS OF GRIEVANCE AND ACCESS TO THE COURTS.
PENDING YOUR FULL INVESTIGATION AND CONSULTATION WITH YOUR COLLEAGUES
IT IS MY HOPE THAT AN AMICABLE SETTLEMENT CAN BE REACHED
AVOIDING DRAWN OUT LITIGATION IN FEDERAL COURT

SINCERELY,

Michael P. Giambalvo
MICHAEL P. GIAMBALVO

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, evaluating claims. 5 U.S.C. 552(a)(3), and concerns the information requested in the letter to which this Notice is attached. A. Authority. The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 4. B. Principal Purpose. The information requested is to be used in evaluating claims. C. Routine Use. See the Notices of Systems of Records for the agency to whom you are submitting this form for this information. D. Effect of Failure to Respond. Disclosure is voluntary. However, failure to supply the requested information or to execute this form may render your claim "invalid".

INSTRUCTIONS: Complete all items - Insert the word NONE where applicable

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES

Any instructions or information necessary in the preparation of your claim will be furnished, upon request, by the office indicated in item #1 on the reverse side. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplemental regulations also. If more than one agency is involved, please state each agency. The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with said claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative. If claimant intends to file claim for both personal injury and property damage, claim for both must be shown in item 12. The amount claimed should be substantiated by competent evidence as follows:

- (a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.
- (b) In support of claims for damage to property which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.
- (c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.
- (d) Failure to completely execute this form or to supply the requested material within two years from the date the allegations accrued may render your claim "invalid". A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

Failure to specify a sum certain will result in invalid presentation of your claim and may result in forfeiture of your rights.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Director, Field Branch Civil Division U.S. Department of Justice, Washington, DC 20530 and to the Office of Management and Budget Paperwork Reduction Project (1105-0008) Washington, DC 20503

INSURANCE COVERAGE

In order that subsequent claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? NONE If yes, give the name and address of insurance company (Number, street, city, State, and ZIP Code) and policy number.

16. Have you filed claim on your insurance carrier in this instance, and if so, is it full coverage or deductible? 17. If deductible, state amount

NO

18. If claim has been filed with your carrier, what action has your insurer taken or proposes to take with reference to your claim? (If it is necessary that you ascertain these facts)

N/A

19. Do you carry public liability and property damage insurance? NONE If yes, give name and address of insurance carrier (Number, street, city, State, and ZIP Code)

MYR-2009-00659

CLAIM FOR DAMAGE,
INJURY, OR DEATH

INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheets if necessary. See reverse side for additional instructions.

FORM APPROVED
GME NO
1105-0008

Submit to Appropriate Federal Agency.

DIRECTOR, TORT Branch CIVIL DIVISION
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 205302. Name, Address of claimant and claimant's personal representative, if any.
(See instructions on reverse.) (Number, street, city, State and Zip Code)Michael P. Gambalvo #59036-066
U.S.P. HAZELTON-P.O. BOX 2000
BRUCESTON MILLS, W.V. 26525

3. TYPE OF EMPLOYMENT / DATE OF BIRTH

MILITARY ☐ CIVILIAN ☐

5. MARITAL STATUS

SINGLE

6. DATE AND DAY OF ACCIDENT

11-30-07

7. TIME (A.M. or P.M.)

12:45 P.M.

8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and involved, the place of occurrence and the cause thereof.) (Use additional pages if necessary.)

SEE: ATTACHED BASIC OF CLAIM/Grounds for Relief, pages 1,2,3.

SEE: ATTACHED STATEMENT OF FACTS, PAGES 1 THROUGH 22.

SEE: ATTACHED ADMINISTRATIVE REMEDY'S

SEE: ATTACHED SIGNED STATEMENTS FROM STAFF, Hemlick, RN. Bensellon

SEE: ATTACHED MEDICAL RECORDS. (27 Pages) H. Mullens - Officer
S. Pulig - Officer

9. PROPERTY DAMAGE

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and Zip Code)

N/A

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side.)

N/A

10. PERSONAL INJURY/WRONGFUL DEATH

STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM, IF OTHER THAN CLAIMANT.
STATE NAME OF INJURED PERSON OR DECEDENT. PERMANENT DAMAGE TO (RT) FOOT 4TH TOE, due to HEALTH SERVICES EMPLOYEE MR. M. AZUMAH'S MALPRACTICE, NEGLIGENCE AND RECKLESSNESS EXPLAINED IN FULL DETAIL IN ATTACHED MEDICAL RECORDS, STATEMENT OF FACTS. TO MANY OTHER VIOLATIONS TO LIST HERE SEE ATTACHED PACKAGE IN SUPPORT OF CLAIM.

11. WITNESSES

NAME

ADDRESS (Number, street, city, State, and Zip Code)

SEE: ATTACHED LIST OF WITNESSES.

Bureau of Prisons Employees, mid-Atlantic Region. U.S.P. HAZELTON, W.V.

Total = 19 WITNESSES IN ALL

26525

12. (See instructions on reverse)

AMOUNT OF CLAIM (In dollars)

12a. PROPERTY DAMAGE

N/A

12b. PERSONAL INJURY

\$250,000.00

12c. WRONGFUL DEATH

N/A

12d. TOTAL (Failure to specify may cause forfeiture of your rights.)

\$250,000.00

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.

13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.)

Michael P. Gambalvo

13b. Phone number of signatory

N/A

14. DATE OF CLAIM

9-7-08

CIVIL PENALTY FOR PRESENTING
FRAUDULENT CLAIMCRIMINAL PENALTY FOR PRESENTING FRAUDULENT
CLAIM OR MAKING FALSE STATEMENTS

The claimant shall forfeit and pay to the United States the sum of \$2,500 plus double the amount of damages sustained by the United States. (See 28 U.S.C. 3722.)

Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001)

RECEIVED

05-109
Heater emblem not visible
Bureau of Prisons, P.O. Box 2000, W.V.

NSN 7540-00-034-4046

BKL
HAZ

OCT 27 2008

BUREAU OF PRISONS
OGC/LITIGATION BRANCHSTANDARD FORM 94 (Rev. 7-85) (GSA)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

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A. *Authority*: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 39 U.S.C. 504 et seq., 28 U.S.C. 2571 et seq., 28 C.F.R. Part 14.

B. *Personal Purpose*: The information requested is to be used in evaluating claims.

C. *Routine Use*: See the Notices of System of Records for the Agency to which you are submitting this form for this information.

D. *Effect of Failure to Respond*: Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "incomplete".

INSTRUCTIONS

Complete all items - Insert the word **NONE** where applicable

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The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with said claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file claim for both personal injury and property damage, claim for both must be shown in Item 12 of this form.

(a) In support of claims for damage to property which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested persons, or, if payment has been made, the itemized signed receipts evidencing payment.

(b) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable persons or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

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Director, Tests Branch
Civil Division
U.S. Department of Justice
Washington, DC 20530

and to the
Office of Management and Budget
Paperwork Reduction Project #1103-0008
Washington, DC 20503

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? ☒ NO ☐ Yes. If yes, give name and address of insurance company (Number, street, city, State, and Zip Code) and policy number ☐ No

16. Have you filed claim on your insurance carrier in this instance, and if so, is it full coverage or deductible?

NO

17. If deductible, state amount

NO

18. If claim has been filed with your carrier, what action has your insurer taken or proposes to take with reference to your claim? If necessary first you ascertain these facts:

N/A

19. Do you carry public liability and property damage insurance? ☐ Yes. If yes, give name and address of insurance company (Number, street, city, State, and Zip Code) ☒ No

NO